



COUNTY OF ERIE

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COUNTY CLERK

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NYSAFE – New York Secure Ammunition and Firearms Enforcement Act A Brief Analysis for Permit Holders

January 15, 2013

Today, the State Legislature passed and the Governor signed legislation known as NYSAFE – the New York Secure Ammunition and Firearms Enforcement Act.

The questions concerning the implementation of this new law are likely to be directed to record keeping (County Clerk) and public safety (Sheriff) divisions of county government. A lot of data collection, monitoring and voluntary cooperation will be necessary to implement the many aspects of this law. The State has indicated they will assume the fiscal and programmatic responsibilities for any new activities stemming from this law.

The following summary focuses on the main provisions of the bill.

Assault Weapons, Magazine Capacity & Sale of Ammunition

Assault Weapons Defined

- The bill bans guns that meet all three of the following criteria:
 - are semi-automatic,
 - have a detachable magazine (in the case of pistols and rifles), and
 - have one feature (two under current law) commonly associated with military weapons.
- Within one year of the effective date, all assault weapons under the new "one-feature" test, as well as weapons grandfathered in under the original NYS assault weapons ban, must be registered.
- Current owners of newly banned weapons may transfer the weapons only to a firearms dealer or to an out of state buyer. All registered owners will be subject to a review of disqualifiers by the State Police.

Magazine Capacity & Sale of Ammunition

- The bill bans all large capacity magazines that can hold more than ten rounds of ammunition, regardless of the date of manufacture. The bill also creates a new ban on magazines that hold more than seven rounds of ammunition. Magazines that can hold more than seven rounds but not more than ten rounds and are

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currently possessed will be grandfathered in, but may only contain seven rounds of ammunition. *Though the bill language lays out these provisions, the bill does not elaborate as to how these provisions are to be enforced.*

- Exceptions are made for large capacity magazines that are curios or relics.
- Sellers of ammunition will be required to:
 - register with the superintendent of the State Police,
 - run a buyer through a State-created review of disqualifiers to ensure that the buyer is not prohibited by law from possessing ammunition before selling them ammunition, and
 - make ammunition sales electronically accessible to the State.
- The bill requires that any ammunition sold commercially to be conducted by a seller that can perform a background check. *This law will effectively require all ammunition sales to culminate in a face-to-face transfer.*

Licensing & Registration

- This bill establishes a statewide gun license and record database to be built and maintained by the State Police. It also:
 - Requires a wide variety of checks and cross references that the State police will be required to undertake including checking against FBI records, State databases, criminal and mental health status changes, etc;
 - Requires the revocation of any gun license from and the surrender of any gun by a defendant upon an entry of a verdict of not responsible by reason of mental disease or defect, upon the acceptance of a plea of not responsible by reason of mental disease or defect, or upon a finding that a defendant is an incapacitated person pursuant to the CPL;
 - Requires, under certain circumstances, the mandatory suspension or revocation of the firearms license of a person against whom an order of protection or a temporary order of protection has been issued; and
 - Requires that the division of state police recertify a gun license holder's license every five years (failure to recertify during this five year period equates to revocation of the license).

This section of the bill would not preempt more restrictive local laws in place in New York City, Westchester, Nassau and Suffolk Counties. In addition, the electronic license and record database is designed to enable the more swift delivery of licenses to license holders and the speedy connection of license holders with disqualifying criteria.

Public Disclosure of Licenses

- Immediately following the enactment of this bill there will be a 120 day freeze on granting public disclosure requests (FOIL) for information on gun licensees or applicants for a license.
- Those applying for a gun license and/or those currently with a pistol permit may submit a form requesting their information to be exempt from public disclosure.

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Private Sales

- Expands the current requirement for background checks to include private sales as well (exception for immediate family).
- Dealers must maintain records of private sale background checks, and private sellers may charge a fee of up to \$10 on a transaction.

Safe Storage

- This bill establishes safe storage requirements for rifles, shotguns and firearms by requiring a gun owner who lives with someone prohibited from possessing a gun to keep the gun secured in a safe storage depository or render it incapable of being fired by putting a safety lock on the gun.
- Individuals prohibited from possessing a gun include those who have:
 - been convicted of a crime punishable by more than one year imprisonment,
 - been adjudicated mentally defective or committed to a mental institution, or
 - is subject to a court order of protection or has been convicted of a misdemeanor crime of domestic violence whose sentence has been completed in the last five years.

Provisions Related to Persons with Mental Illness

Existing New York State law provides for involuntary outpatient commitment to community based mental health services, also known as Assisted Outpatient Treatment (AOT) or "Kendra's Law". The NYSAFE Act contains the following language to strengthen Kendra's Law:

- The maximum length of an initial order for AOT has been extended from 6 months to 12 months. A judge will now have the ability to order up to 12 months of AOT without re-evaluating an individual to determine if they are still in need of AOT.
- Prior to the expiration of an order, the individual must be evaluated to determine whether they are in need of an extension of the AOT order. The local Director of Community Services (DCS) is responsible for ensuring the evaluation is performed.
- Where a local DCS has reason to believe an assisted outpatient has moved, or is moving to another county, the DCS must notify the DCS of the new county. The DCS in the new county would then become responsible for the assisted outpatient and the AOT order upon such relocation.
- AOT law was set to expire in 2015. It has been extended to June 30, 2017.
- All patients being discharged from an Office of Mental Health (OMH) State Hospital who are Department of Correctional Services (DOCS) inmates must be evaluated by OMH to assess need for AOT. If indicated, the hospital director must file a petition or refer the matter to local DCS where the person being discharged is expected to reside, for further evaluation.

Additionally, if a "mental health professional" (physician, psychologist, RN, LCSW) determines that a person they are treating is "likely to engage in conduct that would result in serious harm to self or others," the must notify the DCS. If the DCS determines that the claim of the mental health professional is founded, the DCS must report to the Division of Criminal Justice Services. DCJS will then check registered firearms records to determine if gun license suspension or revocation is in order.

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New and Enhanced Criminal Penalties

Numerous new and enhanced penalties are created under the law, including:

- life imprisonment without parole for the intentional murder of first responders,
- increased penalties for gang related illegal purchases, “straw purchasers” and knowingly selling or giving a gun to someone that is used in a crime,
- increases penalty for possession of a firearm on school grounds or on a school bus from a misdemeanor to a Class E Felony,
- creates a variety of new minimum sentences for gun related crimes, and
- includes criminal sale or disposal of a weapon by providing a firearm, rifle or shotgun to a person knowing he or she is prohibited by law from possessing such firearm, rifle or shotgun. The penalty is raised from a Class A misdemeanor to a Class D felony.

Safer Schools

The law:

- authorizes the Governor to establish the New York State School Safety Improvement Teams;
- amends Building Aid for Metal Detectors and Safety Devices so that schools would be eligible for additional funding for improved safety projects such as metal detectors, and other qualified devices for projects approved by the Commissioner of State Education Department between the period of July 1, 2013 and July 1, 2016. The additional aid would be equal to 10 percent of the current building aid ratio and is not to exceed 100 percent of the Building aid.

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